

FILED  
U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA

2022 JUN 28 PM 12:09

OFFICE OF THE CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Cody A. Cape,  
Defendant.CASE NO. 8:21CR-11PETITION TO ENTER A  
PLEA OF GUILTY

I, Cody A. Cape, the defendant inform the judge that I  
want to plead GUILTY to Count(s) I + II of the  
(indictment or superseding indictment or information) and that the following answers are true:

A. BACKGROUND QUESTIONS:

1. How old are you? 23
2. How much education have you had? High School
3. Have you ever been under the care of a doctor or in a hospital or institution for drug or alcohol treatment or addiction?  
Yes \_\_\_\_\_ No ☒  
If so, when and where? \_\_\_\_\_
4. Have you ever been under the care of a doctor or in a hospital for a mental or emotional condition?  
Yes \_\_\_\_\_ No ☒  
If so, when and where? \_\_\_\_\_
5. If an attorney is now representing you in this case:
  - a) What is your attorney's name? Stu Dorman
  - b) Have you had enough time to talk with your attorney?  
Yes ☒ No \_\_\_\_\_
  - c) Have you told your attorney everything about your case?  
Yes ☒ No \_\_\_\_\_
  - d) Are you satisfied with the job he or she has done for you?  
Yes ☒ No \_\_\_\_\_

- e) If you have any objections to the way the attorney has represented you, what are those objections?

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6. Do you understand the charge(s) against you? Yes ☒ No ☐

B. CONSTITUTIONAL RIGHTS - WAIVERS

The questions in this section are designed to inform you of valuable constitutional rights you will give up by pleading guilty.

7. Do you understand that you have a right to plead NOT GUILTY to every charge filed against you?

Yes ☒ No ☐

8. Do you understand that, if you plead NOT GUILTY, you have the following constitutional rights:

- a) the right to a speedy and public trial by jury  
Yes ☒ No ☐

- b) the right to an attorney at all stages of the proceedings, and, if you cannot afford to pay an attorney, one will be appointed to represent you  
Yes ☒ No ☐

- c) the right to see and hear all witnesses called to testify against you and the right to cross-examine them  
Yes ☒ No ☐

- d) the right to use the court's subpoena power to compel the attendance of witnesses and the production of other evidence at trial  
Yes ☒ No ☐

- e) the right to take the witness stand or not, as you choose, and that you cannot be required to take the witness stand  
Yes ☒ No ☐

- f) the right not to testify and the jury cannot take this as evidence against you  
Yes ☒ No ☐

g) the right to be presumed innocent until and unless the United States has proven you guilty of the offense beyond a reasonable doubt by the unanimous agreement of all 12 jurors.

Yes ☒ No ☐

9. Do you understand that, if you plead GUILTY, you will be found guilty of the offense without a trial and you will have given up all of the above rights, except the right to an attorney?

Yes ☒ No ☐

10. Do you understand that, if you plead GUILTY to a felony offense, you will be convicted of a felony? A felony conviction may deprive you of valuable civil rights, such as the right to vote, to hold public office, to serve on a jury and to possess any kind of firearm.

Yes ☒ No ☐

11. Do you understand that if you are not a United States citizen, that under immigration law, your guilty plea will be considered by immigration officials in determining whether you are deported, that is, removed from the United States?

Yes ☒ No ☐

12. Do you understand that in nearly all cases involving drug trafficking and in most federal felony cases, if you are not a U.S. citizen your guilty plea will result in your permanent removal from the United States?

Yes ☒ No ☐

### C. SENTENCING - GENERAL

The questions in this section are designed to assure the judge that you understand aspects of the sentencing process.

Answer question 13 only if you are pleading guilty pursuant to an 11(c)(1)(C) agreement. Otherwise, move on to question 14:

13. Do you understand that the judge may accept or reject your plea agreement? If the judge rejects your plea agreement, you may withdraw your guilty plea. If the judge accepts your plea agreement, the judge must follow its terms. That is, the judge must impose any specific sentence or apply the sentencing range, specific Sentencing Guidelines provisions, policy statements, or sentencing factors agreed upon by you and the government in the plea agreement. Your sentence will follow the terms of the agreement, which may be the same, greater or lesser than the sentence you would have received had you pleaded not guilty and had been convicted by a jury.

Yes ☒ No ☐

If you answered question 13, skip question 14 and proceed to question 15.

14. Do you realize that:
- a) if you plead GUILTY, the judge may impose the same punishment as if you had pleaded NOT GUILTY and had been convicted by a jury?

Yes ~~Yes~~ No       

- b) the sentence you will receive is solely a matter for the judge to decide?

Yes ~~Yes~~ No       

- c) there is no guarantee your sentence will be within any particular sentencing guideline range?

Yes        No       

15. What are the mandatory minimum and maximum punishments required by law for the offense or offenses to which you are pleading guilty?

| Count | Imprisonment           |      | Fine |            | Supervised Release |       | Special Assessment |
|-------|------------------------|------|------|------------|--------------------|-------|--------------------|
|       | min                    | max  | min  | max        | min                | max   |                    |
| I     | 0                      | 10   |      | 250,000.00 |                    | 3 yrs | 100.00             |
| II    | 5                      | Life |      | 250,000.00 |                    | 5 yrs | 100.00             |
|       | consecutive to count 1 |      |      |            |                    |       |                    |
| CC    |                        |      |      |            |                    |       |                    |
|       | SPC 603/20 SJD         |      |      |            |                    |       |                    |

16. Do you understand that probation is generally not available if there is a mandatory minimum penalty?

Yes ✓ No       

17. Will you be forfeiting any property to the United States as a result of your guilty plea?

Yes        No ✓

18. Do you realize that, if you plead GUILTY, the judge may require you to make restitution to any victim of the offense?

Yes ✓ No       

19. Do you understand that, if you are convicted of any offense consisting of possession or distribution of controlled substances, you may be ineligible for any and all federal benefits?

Yes ✓ No

20. Do you realize that the judge must require you to pay on each count to which you are convicted a special assessment as follows: each felony count \$100; each misdemeanor count \$5 to \$25?

Yes ☒ No ☐

21. If you are on probation, parole or supervised release from any court, do you know that by pleading GUILTY here your probation, parole or supervised release may be revoked and you may be required to serve time in that case in addition to any sentence imposed upon you in this case?

Yes ☒ No ☐

22. The presentence report is instrumental in determining appropriate sentencing decisions, risk classification in the Bureau of Prisons, and identifying strategies that will provide you with the greatest opportunity for success. Full participation in the presentence process, including an interview, is your opportunity to provide a detailed account of your background and any other factors that could have an impact on your success. The U.S. Probation Office believes your failure to fully participate in the presentence investigation may limit sentencing options, programming availability, and other aspects of supervision. Have you discussed this with your attorney?

Yes ☒ No ☐

D. ADVISORY SENTENCING GUIDELINES

You will be sentenced by the judge after consideration of the advisory federal sentencing guidelines and other important pertinent factors. It is important that you understand certain consequences of these guidelines.

23. Have you spoken in detail with your attorney about the advisory sentencing guidelines?

Yes ☒ No ☐

24. Have you thoroughly discussed with your attorney the sentencing table and the concepts of "offense level" and "criminal history"?

Yes ☒ No ☐

25. Do you understand that there are numerous factors that may increase your sentence under the advisory sentencing guidelines?

Yes ☒ No ☐

26. Do you understand that the judge is required to take into account all conduct, circumstances, and injuries associated with your criminal conduct, whether or not this conduct is charged by the government in the crime to which you are pleading guilty? Thus, under the advisory sentencing guidelines, the judge will consider

all relevant conduct at the time of sentencing, even if you are pleading guilty to less than all counts in the indictment.

Yes ☒ No ☐

27. Do you understand that parole has been abolished in the federal system? Thus, if you are sentenced to a term of imprisonment, you will serve that term, less no more than 54 days per year you earn for good conduct. There is no good conduct time awarded on sentences of less than one year and one day.

Yes ☒ No ☐

28. Do you understand that, if you are sentenced to a term of imprisonment, the judge will typically impose a period of supervised release to follow your release from imprisonment?

Yes ☒ No ☐

29. Do you understand that during any period of supervised release your activities will be limited by conditions set by the judge and that violation of any of those conditions may result in the judge's revoking the term of supervised release, requiring you to serve in prison all or part of the term of supervised release without credit for time previously served on post-release supervision, and imposing another term of supervised release?

Yes ☒ No ☐

E. VOLUNTARY NATURE OF PLEA

30. Are your plea of GUILTY and the waivers of your rights made voluntarily and completely of your own choice, free of any force or threats from anyone?

Yes ☒ No ☐

31. a) Has any plea agreement been made by you with anyone which causes you to plead GUILTY?

Yes ☒ No ☐

- b) Are all the terms of the plea agreement included in the written agreement?

Yes ☒ No ☐

- c) Do you understand that the judge may reject the agreement, if the judge finds that the plea agreement is not in the interest of justice?

Yes ☒ No ☐

32. Has anyone made any promise that causes you to plead GUILTY, aside from the promises, made in your plea agreement?

Yes ☐ No ☒

33. Has any officer, attorney or agent of any branch of the government (federal, state or local) promised, suggested or predicted that you will receive a lighter sentence, or probation, or any other form of leniency if you plead GUILTY?

Yes \_\_\_\_\_ No ☒

34. Has the judge suggested what your actual sentence will be?

Yes \_\_\_\_\_ No ☒

35. Are you under the influence of any kind of alcohol, medicine or drug that is, in the least way, interfering with your ability to think clearly and understand exactly what you are doing in answering these questions?

Yes \_\_\_\_\_ No ☒

36. Are you pleading GUILTY for any reason other than the fact that you are guilty

Yes \_\_\_\_\_ No ☒

37. Is there any other information or advice that you want before you enter a plea?

Yes \_\_\_\_\_ No ☒

F. CONCLUSION / FACTUAL BASIS

38. Has your attorney gone over all of these questions and your answers to them?

Yes ☒ No \_\_\_\_\_

39. Do you understand all of these questions?

Yes ☒ No \_\_\_\_\_

If not, which questions don't you understand?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

40. Are you GUILTY?

Yes ☒ No \_\_\_\_\_

41. What acts did you do that cause you to think you are guilty of the charge(s) to which you want to plead GUILTY?

Court I I threatened to murder a  
federal officer in retaliation against  
him for performing his duties

Court II I committed the elements of a  
crime of violence prosecutable in  
federal court by possessing a firearm  
in relation to the crime of violence.

42. **Limited English proficient defendants must answer the following question:**

This petition and the other documents referred to in the petition including any written plea agreement were read to me in my native language by an interpreter. The interpreter also interpreted all questions and answers between me and my attorney in completing the above documents. I understood the interpretation of the above documents and of the questions and answers between me and my attorney. Is this true?

Yes \_\_\_\_\_ No \_\_\_\_\_

Signed in the presence of my attorney this 17<sup>th</sup> day of May

G. J. G. P. L.  
Defendant



**CERTIFICATE OF DEFENSE ATTORNEY**

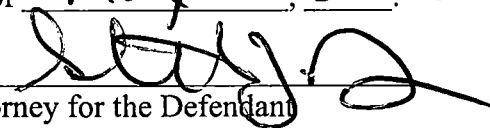
I, as attorney for the defendant, hereby certify that:

1. I have read and fully explained to the defendant the allegations contained in the indictment or information in this case.

2. The plea of guilty offered by the defendant to count(s) 1 & 11 accords with my understanding of the facts the defendant has related to me, is consistent with my advice to the defendant, and in my opinion is voluntarily and understandingly made.

3. I assure the court that I have advised the defendant about the sentencing procedures under the advisory sentencing guidelines and 18 U.S.C. Section 3553(a) and have explained to the defendant the potential consequences of a plea of guilty in light of the matters set out in section D of this petition.

Signed by me in the presence of the defendant and after full discussion of the contents of this petition to enter a plea of guilty, this 17<sup>th</sup> day of May, 2022

  
Attorney for the Defendant

**CERTIFICATE OF PROSECUTING ATTORNEY**

I, as attorney for the government, hereby certify that:

I have reviewed this petition to enter a plea of guilty and in my judgment, acceptance of the defendant's plea(s) of guilty to the charge(s) in question will not undermine the statutory purposes of sentencing.

Signed by me this 28<sup>th</sup> day of June, 2022.

  
\_\_\_\_\_  
Attorney for the Government

### DECLARATION OF INTERPRETER

I, \_\_\_\_\_, have served  
as interpreter in \_\_\_\_\_ (language) for the defendant in this matter, and:

1. I sight translated for the defendant, or interpreted between the defense attorney and the defendant, the following: (X all which apply)

- \_\_\_\_\_ Indictment
- \_\_\_\_\_ Waiver of indictment
- \_\_\_\_\_ Information
- \_\_\_\_\_ Petition to enter a plea of guilty
- \_\_\_\_\_ Plea agreement
- \_\_\_\_\_ Other

2. I sight translated the above documents for the defendant in the presence of the attorney on the following occasions: (Insert all dates applicable) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. During the session (s) set forth above, I interpreted the remarks of the defendant's attorney to the defendant, the responses of the defendant to the attorney, all the questions the defendant asked and all the responses from the attorney.

4. The defendant's answers are consistent with the questions asked by the defendant's attorney.

5. I am proficient in the \_\_\_\_\_ (language understood by the defendant) and English languages and I am able to accurately sight translate written matters and interpret oral conversation in the aforementioned languages.

I declare under penalty of perjury that the foregoing is true and correct. Executed  
on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Interpreter